UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GRANT IMPORTING & DISTRIBUTING CO., INC.; HAYES BEER DISTRIBUTING COMPANY; L&V DISTRIBUTORS, INC.; CHICAGO BEVERAGE SYSTEMS LLC; JOSEPH MULLARKEY DISTRIBUTORS, INC; TOWN & COUNTRY DISTRIBUTORS, INC.; KOZOL BROS., INC.; FRED W. LOSCH BEVERAGE CO.; and SCHAMBERGER BROS. INC.,	No. 08 CV 1269
Plaintiffs,	The Honorable Joan H. Lefkow
v.	
AMTEC INTERNATIONAL OF NY CORP., Individually and d/b/a EUROPEAN BEER IMPORTERS, INC.; and ADVANCED BRANDS & IMPORTING CO., INC., d/b/a STAR BRANDS IMPORTS,	
Defendants.	

AMTEC INTERNATIONAL OF NY CORP.'S
RESPONSE TO PLAINTIFFS' MOTION TO REMAND

NOW COMES Defendant Amtec International of NY Corp. ("Amtec"), by and through its attorneys Ettelman & Hochheiser, and in response to the motion to remand filed by Plaintiffs, states as follows:

1. On February 28, 2008, Amtec received by facsimile a copy of Plaintiffs' Verified Complaint (filed on the same day) and a motion for a temporary restraining order. (*See* Exhibit 1, Verified Complaint, and Exhibit 2, Notice of Emergency Motion and Motion for Temporary Restraining Order.) The motion was spindled in the Circuit Court of Cook County by way of a notice of emergency motion for March 4, 2008.

2. On March 3, 2008, Amtec removed this action from the Circuit Court of Cook County, Chancery Division to the Northern District of Illinois based on the court's

diversity jurisdiction. This action is brought against only two defendants, namely Amtec and Advanced Brands and Importing Co., Inc. ("Advanced"). Both Amtec and Advanced are New York corporations with their principal place of businesses in New York. Plaintiffs are all Illinois entities with their principal place of businesses in Illinois. Thus, because Defendants are not domiciled in Illinois, and Plaintiffs are, there is diversity between the parties and this action is properly before the court.

3. Plaintiffs' motion to remand is premised on the inaccurate belief that there are three defendants in this action. However, as is clear from the caption of the Verified Complaint, the preamble of the Verified Complaint, the body of the Verified Complaint (¶ 19), and the Notice of Emergency Motion filed in the Circuit Court, Plaintiffs only named Amtec and Advanced as defendants and only served notice on Amtec and Advanced. Plaintiffs insistence that it also filed suit against European Beer Importers Co., Inc. ("European"), an Illinois corporation, is simply wrong.

4. Rather, Plaintiffs Verified Complaint names "AMTEC INTERNATIONAL OF NY CORP., individually and d/b/a EUROPEAN BEER IMPORTERS, INC." Since European Beer Importers Co, Inc. ("European"), is a separate and distinct corporation, it is inconceivable how Amtec could "d/b/a" as European. It is also inconceivable how Amtec, a corporation, could act "individually." In any event, however, those are Plaintiffs' allegations.

5. Further, and most importantly, if European was a defendant, Plaintiffs were required to serve a separate summons on it. However, Plaintiffs only served two summons, one on Amtec and one on Advanced. Tellingly, European is not listed as a separate defendant on the summons. (*See* Exhibit 3, Affidavit of Boguslaw Pajor- Exhibit "E")

6. In addition, if European was a separate party, as Plaintiffs now insist, Plaintiffs were required to serve a separate notice of emergency motion on European. *See* Illinois Supreme Court Rule 104(b). However, Plaintiffs notice of emergency motion once again only names Amtec d/b/a European. No separate notice was served on European. (*See* Exhibit 2)

7. In addition, Plaintiffs' delay in filing this motion to remand demonstrates an improper attempt at forum shopping. Despite the fact that Plaintiffs insisted in their notice of emergency motion filed in State court that an "emergency" existed, they have waited until March 20, 2008, to notice this motion to remand. If an emergency truly existed, as Plaintiffs previously claimed, they should have filed an emergency motion for temporary restraining order rather than wait 17 days to present their motion to remand. The only reason Plainitffs have not filed a motion for temporary restraining order is because their motion is frivolous and they believe they have a greater chance of succeeding in State court.

8. Lastly, as the attached affidavit of Boguslaw Pajor, President of Amtec, demonstrates, Amtec and not European is the new importer of Zywiec brand beer in Illinois. (*See* Exhibit 3) Accordingly, even if Plaintiffs later amended their complaint to join European as a defendant, insofar as Plaintiffs' claims depend upon the allegation that the new importer is a "successor brewer" under the Illinois Beer Industry Fair Dealing Act, this joinder would be factually unsupportable and would be filed in bad faith solely to defeat diversity. *See Schwartz v. State Farm Mut. Auto. Ins. Co*., 174 F.3d 875, 878 (7th Cir. 1999) ("Such joinder is considered fraudulent, and is therefore disregarded, if the out-of-state defendant can show there exists no 'reasonable possibility that a state court would rule against the [in-state] defendant.'")

WHEREFORE, Defendant Amtec International of NY Corp. respectfully requests that this Honorable Court deny Plaintiffs motion to remand.

Dated: Garden City, New York
March 17 2008

ETTELMAN & HOCHHEISER, P.C.

By:___s/ [Joshua S. Stern]_____

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CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2008, I electronically filed the foregoing Notice of Removal with the Clerk of the Court using CM/ECF system which will send notification of such filing to all attorneys of record.

ETTELMAN & HOCHHEISER, P.C.

By:s/ [Joshua S. Stern]_________

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